STATE OF MICHIGAN

COURT OF APPEALS

FONDA PLACE PARTNERS LTD., Petitioner-Appellant,	UNPUBLISHED September 23, 2003
v	No. 240692 Tax Tribunal
TOWNSHIP OF BRIGHTON, Respondent-Appellee.	LC No. 00-279506
SUMMERWOOD CENTER, Petitioner-Appellant,	
v	No. 240693 Tax Tribunal
TOWNSHIP OF BRIGHTON, Respondent-Appellee.	LC No. 00-278953

Before: Sawyer, PJ., Hoekstra and Murray, JJ.

PER CURIAM.

Petitioners appeal as of right from the Tax Tribunal's orders denying their motions for reconsideration, motions to set aside default judgment, and motions to extend time, the Tax Tribunal's subsequent sua sponte orders of dismissal. We affirm.

I. Relevant Facts and Procedure

Petitioners own several office buildings on nonresidential property. In order to compensate for the costs associated with a sanitary sewer project, petitioners were subjected to a special assessment levied by respondent. Upon examination of the daily water/sewage usage for Summerwood Center's (Summerwood's) two parcels of land, respondent assessed $32,029 in taxes for parcel 039 and $38,484 in taxes for parcel 040. Fonda Place Partners, Ltd. (Fonda Place) was assessed $90,124 in taxes for its parcel.

Petitioners filed petitions with the Tax Tribunal in order to compel respondent to reduce the number of "residential equivalent units" (REU's), used by respondent in order to determine

the amount of water/sewage used by a specific tax parcel, on their respective tax parcels. The Tax Tribunal ordered the parties to exchange and file valuation disclosures. Petitioners each submitted a short letter from an appraiser, which concluded that the sewer service was not a basis for any rental increase, whereas respondent filed a detailed real estate appraisal as their valuation disclosure.

Finding petitioners' valuation disclosure noncompliant, the Tax Tribunal entered default orders against petitioners, giving them twenty-one days to file a conforming valuation disclosure. Petitioners subsequently filed motions for reconsideration of the default orders, or alternatively, to set aside the default order and extend the time for filing and exchanging the valuation disclosures, arguing that they did not dispute the valuation of the property, but that the dispute was over the number of REU's assessed. Petitioners failed to file a new valuation disclosure, and instead contended that the standard valuation disclosure was unnecessary to properly decide the case on its merits. The Tribunal disagreed, denying petitioners' motions and entering sua sponte orders of dismissal against petitioners.

II. Standard of Review

"In the absence of fraud, this Court's review of a decision of the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle." *Blaser v East Bay Twp*, 242 Mich App 249, 252; 617 NW2d 742 (2000). The tribunal's findings of fact are conclusive if they are supported by competent, material, and substantial evidence on the whole record. *Id*. Additionally, the power of the Tax Tribunal to dismiss a petition based on a petitioner's noncompliance with a rule or order of the tribunal is unquestionable. *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986). However, the tribunal's actions are reviewed for an abuse of discretion. *Id*.

III. Discussion

A. Special Assessment

A special assessment is defined as a levy upon property within a specified district, but which is not a tax. *Kadzban v City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993). Unlike a tax, a special assessment is imposed to defray the costs of specific local improvements, rather than to raise revenue for general governmental purposes. *Id*. Special assessments are sustained upon the theory that the value of the property in the special district is enhanced by the improvement for which the assessment is made. *Id*. "In other words, a special assessment can be seen as remunerative; it is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area." *Id*. "In numerous instances, abutting property has been specially assessed the costs of paving a road or installing a sewer system." *Id*. at 500-501. Further, it is a well-settled rule that municipal decisions regarding special assessments are presumed to be valid. *Id*. at 502.

In order to challenge the presumption of a special assessment's validity, the challenging party must demonstrate that there is a substantial or unreasonable disproportionality between the amount assessed and the value that accrues to the land as a result of the improvements. *Dixon Rd Group v City of Novi*, 426 Mich 390, 403; 395 NW2d 211 (1986). The following two requirements must be met in order for a special assessment to be deemed valid: (1) the

improvement funded by the special assessment must confer a special benefit upon the assigned properties beyond that provided to the community as a whole, and (2) the amount of the special assessment must be reasonably proportionate to the benefits derived from the improvement. *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486, 493; 597 NW2d 858 (1999).

Although petitioners have disguised their argument as one challenging the "water flow formula," it is evident that petitioners are actually challenging the overall special assessment amount. In challenging the validity of the special assessment by contending that the REU amount was wrong and that the special assessment amount was, in turn, too high, petitioners must demonstrate that there is a substantial or unreasonable disproportionality between the amount assessed by respondent and the value that petitioners received based on the installation of the new sewer system. *Dixon*, *supra* at 403. If the REU amount was incorrect and petitioners were, in fact, charged an amount that was too high, such would be reflected by an unreasonable disproportionality between the value received by petitioners and the special assessment amount. Therefore, contrary to petitioners' arguments, the valuation disclosure is necessary to determine the difference between petitioners' properties with and without the sewer system, which would, in turn, be utilized to determine if there is an unreasonable disproportionality between the value of the property with the sewer system and the amount of the assessment.

Regardless of the necessity of the valuation disclosure to the merits of this case, petitioners' arguments ignore the fact that the tribunal entered an order of default against petitioners for their failure to file a compliant valuation disclosure. As indicated by the tribunal, 1999 AC, R 205.1252 instructs, in relevant part, that "[a] party's valuation disclosure in a property tax appeal[1] *shall be filed with the tribunal and exchanged with the opposing party as provided by order of the tribunal*." (Emphasis added.)

Here, petitioners failed to comply with the Tax Tribunal's order requiring them to file a valuation disclosure, and the subsequent order requiring that a compliant one be filed within 21 days in order to avoid dismissal of their case. The tribunal's power to dismiss a petition based on noncompliance with a rule or order of the tribunal is vast, *Stevens*, *supra* at 761, and based on petitioners' failure to file a compliant valuation disclosure in accordance with the tribunal's default order, see III. B., *infra*, we cannot say the tribunal abused its discretion in dismissing petitioners' petitions.

B. Valuation Disclosure

Petitioners contend that, even if a valuation disclosure was necessary, the valuation disclosure submitted by them was a valid valuation disclosure. Petitioners argue that their valuation disclosures were sufficient because the difference between the value of the property before the addition of the sewer system and after the installation of the sewer system was

[1] A "property tax appeal" is defined in the administrative code as "any proceeding relating to real and personal property assessments, valuations, rates, *special assessments*, refunds, allocation, or equalization or any other proceeding brought before the tribunal under the state's property tax laws." 1999 AC, R 205.1101(k) (emphasis added).

irrelevant. As previously stated, valuation disclosures were required in this case because petitioners' challenges to the REU formula were an indirect challenge to the special assessment implemented by respondent, and the valuation disclosures were specifically ordered by the Tax Tribunal. Further, as conceded by petitioner, "[t]he valuation disclosure is merely a safeguard or check to see that the result arrived at in using the water flow formula is not unreasonable." This statement demonstrates the necessity of the valuation disclosure.

Petitioners fail to demonstrate or even argue how their valuation disclosures were sufficient in accordance with the administrative code. See 1999 AC, R 205.1101(m). "'It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wysocki v Felt*, 248 Mich App 346, 360; 639 NW2d 572 (2001). Therefore, we need not address this issue based on petitioners' failure to demonstrate how their submitted valuation disclosures were sufficient pursuant to the administrative rule.

Instead of demonstrating the sufficiency of their valuation disclosure, petitioners rely upon a comparison of their valuation disclosure to the valuation disclosure in an unrelated case to establish that the tribunal acted arbitrarily and inconsistently. In support of this argument, petitioners attach the unrelated valuation disclosure, and merely state that the tribunal did not sua sponte dismiss that case.

Regardless of petitioners' contentions, we do not find that the tribunal's actions were arbitrary or capricious. A "valuation disclosure" is defined as "documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and which contains the party's value conclusions and data, valuation methodology, analysis, or reasoning in support of the contention." 1999 AC, R 205.1101(m). Petitioners' "valuation disclosures" consists of two short paragraphs that conclusively state that a sanitary sewer service is not the basis for a rental increase. Petitioners' "valuation disclosures" fail to include any data or valuation methodology, and contain limited analysis or reasoning quite unlike the valuation disclosure submitted by petitioners for comparative purposes, which includes data, a discussion on the valuation methodology, and much more detailed analysis and reasoning.

C. Opportunity to File Compliant Disclosure

Finally, petitioners contend that they should have been given additional time to file a compliant valuation disclosure. We disagree.

On June 21, 2001, the Tax Tribunal ordered the parties to file and exchange valuation disclosures pursuant to Rule 205.1101(1)(m). On August 22, 2001, petitioners filed a short appraisal letter to the Tax Tribunal as their valuation disclosure. On September 24, 2001, the Tax Tribunal subsequently found that petitioners were in default for their failure to file a compliant valuation disclosure, and allotted twenty-one days to file a compliant disclosure. However, petitioners relied on the valuation disclosures previously filed by them, and failed to file any subsequent valuation disclosure. Approximately six months later, on March 21, and March 25, 2002, the Tax Tribunal entered its orders dismissing petitioners' actions.

Petitioners were provided ample time to cure their defective valuation disclosure. While petitioners contend that they needed a minimum of sixty days to cure the defect, petitioners were afforded significantly more time than the amount requested prior to the tribunal's dismissal of the action. However, petitioners failed to take any further action in filing a subsequent valuation disclosure. Accordingly, the Tax Tribunal did not abuse its discretion. The Tax Tribunal's power to dismiss a petition based on a petitioner's noncompliance with a rule or order of the tribunal is unquestionable, and the dismissal was not entered until approximately six months after the default order was entered despite the fact that petitioners continually failed to comply with the default order. *Stevens*, *supra* at 761.

Affirmed.

/s/ David H. Sawyer
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray